KING *v.* PUTNAM INVESTMENT COMPANY.

ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

No. 10. Submitted November 7, 1918.—Decided November 18, 1918.

The contention that a contract of agency to sell real estate was void because federal lands, under homestead entry, were included, presents no federal question where the state court found they were not included and the record supports the finding.

Writ of error to review 96 Kansas, 109, dismissed.

THE case is stated in the opinion.

Mr. Lee Monroe for plaintiff in error. *Mr. James A. McClure* and *Mr. C. M. Monroe* were also on the brief.

Mr. B. I. Litowich for defendant in error.

Memorandum for the court by THE CHIEF JUSTICE.

Having previously considered this case (82 Kansas, 216; 87 Kansas, 842) the court awarded relief because of the violation of a contract of employment to procure the sale of real estate. 96 Kansas, 109.

The case is here in reliance upon a federal question based upon the assumption that the authority to sell included land belonging to the United States covered by an inchoate homestead entry. But the court below expressly

found that such land was not included in the contract, hence the sole basis for the asserted federal question disappears.

And this result is not changed by considering, to the extent that it is our duty to do so, the question of fact upon which the existence of the alleged federal question depends. *Northern Pac. Ry. Co.* v. *North Dakota*, 236 U. S. 585, 593; *Creswill* v. *Knights of Pythias*, 225 U. S. 246, 261; *Kansas City Southern Ry. Co.* v. *Albers Commission Co.*, 223 U. S. 573, 591. We so conclude because the result of discharging that duty leaves us convinced that the finding below was adequately sustained; indeed, that the record makes it clear that the alleged ground for the federal question was a mere afterthought. The case, therefore, must be and is

Dismissed for want of jurisdiction.